

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IVAN CISNEROS,

Petitioner,

v.

GISELLE MATTESON,

Respondent.

No. 1:21-cv-00201-NONE-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
HABEAS PETITION, FOR WRIT OF
CORPUS, DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE FOR
PURPOSE OF CLOSING CASE AND THEN
CLOSE CASE, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

(Doc. No. 21)

Petitioner Ivan Cisneros is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 15, 2021, the assigned magistrate judge issued findings and recommendations recommending that respondent's motion to dismiss the pending petition as untimely under the applicable statute of limitations. (Doc. No. 21.) Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within thirty (30) days after service. No objections have been filed. However, on November 15, 2021, petitioner filed a motion to withdraw the habeas petition. (Doc. No. 26.)

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
3 magistrate judge’s findings and recommendations are supported by the record and proper
4 analysis.

5 In addition, the court declines to issue a certificate of appealability. A state prisoner
6 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of
7 his petition, and an appeal is only allowed in certain circumstances. 28 U.S.C. § 2253; *Miller-El*
8 *v. Cockrell*, 537 U.S. 322, 335-336 (2003). If a court denies a petitioner’s petition, the court may
9 only issue a certificate of appealability when a petitioner makes a substantial showing of the
10 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the
11 petitioner must establish that “reasonable jurists could debate whether (or, for that matter, agree
12 that) the petition should have been resolved in a different manner or that the issues presented
13 were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473,
14 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

15 In the present case, the court finds that petitioner has not made the required substantial
16 showing of the denial of a constitutional right to justify the issuance of a certificate of
17 appealability. Reasonable jurists would not find the court’s determination that petitioner is not
18 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
19 proceed further. Thus, the court declines to issue a certificate of appealability.

20 Accordingly,

- 21 1. The findings and recommendations issued on September 15, 2021, (Doc. No. 21),
22 are adopted in full;
- 23 2. Respondent’s motion to dismiss (Doc. No. 9), is granted;
- 24 3. The petition for writ of habeas corpus is dismissed with prejudice;

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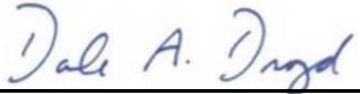
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1 4. The Clerk of the Court is directed to assign a district judge to this case for the
2 purpose of closing the case and then to close the case; and

3 5. The court declines to issue a certificate of appealability.

4 IT IS SO ORDERED.

5 Dated: **December 1, 2021**


UNITED STATES DISTRICT JUDGE